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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92061499
Party	Plaintiff Vice Media LLC and Vice Media Canada Inc.
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Signature	/Lawrence R. Robins/
Date	05/23/2016
Attachments	Motion for Smith Protective Order.pdf(62391 bytes) Robins Declaration in Support of Motion for Protective Order.pdf(35989 bytes) Executed Lutzky Declaration.pdf(295767 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

KAVEH HAROUNIAN,

Counterclaimant,

- against -

VICE MEDIA LLC and
VICE MEDIA CANADA INC.,

Counterclaim-Defendants.

:
: Cancellation No. 92/061,499
:
:
:
: **COUNTERCLAIM-DEFENDANTS’**
: **MOTION FOR PROTECTIVE**
: **ORDER AND MEMORANDUM IN**
: **SUPPORT THEREOF**
:
:
:

Counterclaim-Defendants Vice Media LLC (“Vice Media”) and Vice Media Canada Inc. (“Vice Canada” and, together with Vice Media, “Vice”), by their attorneys, Sullivan & Worcester LLP, pursuant to Section 412.06(a) of the Trademark Trial and Appeal Board Manual of Procedure, Rule 26(c) of the Federal Rules of Civil Procedure, and 37 C.F.R. § 2.120(f), hereby move for a protective order preventing Counterclaimant Kaveh Harounian from deposing Vice Media’s CEO, Shane Smith.

Under the Board’s Manual of Procedure, Board precedent, and well-established federal law governing “apex” depositions, Counterclaimant cannot take the deposition of Mr. Smith without first establishing that (1) Mr. Smith has unique knowledge of the facts at issue in this proceeding or (2) Counterclaimant has exhausted, without success, other less intrusive discovery methods, such as depositions of other employees. Counterclaimant has not met, and cannot meet, this burden.

Mr. Smith does not have unique knowledge of a particular subject that is relevant to the dispute. Nor has Counterclaimant exhausted less intrusive discovery methods.

The only factual issues that are relevant in this cancellation proceeding relate to Vice's use of the VICE and Design mark (Registration No. 4625064) in connection with providing information about fashion. Mr. Smith oversees Vice's massive global media enterprise which operates in more than 35 countries. Mr. Smith is the executive producer and chief on-air host of Vice's weekly HBO documentary TV series entitled *VICE*, which tackles a wide range of global issues often overlooked by traditional media and brings Mr. Smith to far-flung locations all over the world. Vice won an Emmy for *VICE* in 2014 for Outstanding Informational Series or Special. As a result of these responsibilities and others detailed below, Mr. Smith is certainly not intimately involved in Vice's fashion-related operations. There are other witnesses who have significantly more knowledge about these activities. Counterclaimant has not deposed any of these individuals and, in fact, has not conducted any depositions to date.

The Smith Notice of Deposition is nothing but a transparent attempt by Counterclaimant to harass Vice and Mr. Smith. The Board therefore should enter a protective order preventing the deposition.

STATEMENT OF FACTS

Originating in 1994, Vice has grown from a small magazine company into a global digital media and broadcasting empire that operates throughout the United States and in more than 35 countries, with more than 2,100 employees. Declaration of Jon Lutzky, dated May 17, 2016 ("Lutzky Decl."), ¶ 2.

In 2006, Vice began expanding into digital video, launching VBS.tv, a new video service, as a joint venture with MTV Networks, gaining a large fan base. Lutzky Decl. ¶ 3. In 2007, Vice began aggressively expanding its digital and media operation, including venturing into music (Vice Music), sports (Vice Sports), and literature (Vice Books), all while increasing its coverage of news and current events. Lutzky Decl. ¶ 3.

In August 2013, 21st Century Fox invested \$70 million in Vice, setting up Vice to expand its platform exponentially. Lutzky Decl. ¶ 4. In 2013, Vice Media premiered a new 30-minute news program for HBO entitled *VICE*. Lutzky Decl. ¶ 4. In 2014, the show won a Creative Arts Emmy Award® for Outstanding Informational Series or Special. Lutzky Decl. ¶ 4. Also in 2014, Vice launched its news channel, Vice News. Lutzky Decl. ¶ 4.

In late 2015, Disney and/or A&E invested \$400 million in Vice. Lutzky Decl. ¶ 5. Also in late 2015, Vice and A&E Networks announced Viceland, a cable network featuring Vice curated and produced content. Lutzky Decl. ¶ 5. Viceland premiered in early 2016 in the United States and Canada, and is set to launch in the United Kingdom and France with plans to expand to other territories in the future. Lutzky Decl. ¶ 5.

In this proceeding, the only remaining claim is a counterclaim for cancellation of Vice Canada's October 21, 2014 Registration No. 4625064 for the VICE & Design mark (the "VICE Mark") in International Class 45 for use in "[p]roviding information about fashion." *See* Counterclaimant's Answer and Counterclaim to Cancel Plaintiff's Registration No. 4,625,064, at Counterclaim ¶ 8. Counterclaimant asserts two bases for cancellation: priority of use and likelihood of confusion. *See id.* at ¶¶ 9-14. Consequently, the only factual issues in dispute relate to Vice's first use of the VICE Mark in connection with providing information about fashion and whether Vice's use of the VICE Mark is such as to cause a likelihood of confusion with Counterclaimant's own registered mark.

Mr. Smith is one of three co-founders and remains a co-owner of Vice. Lutzky Decl. ¶ 6. He currently serves as the CEO of Vice Media. Lutzky Decl. ¶ 6.

Mr. Smith's primary responsibilities are threefold. First, Mr. Smith is the on-air host and executive producer of Vice's HBO show, *VICE*. Lutzky Decl. ¶ 7. This requires him—frequently and often unexpectedly—to travel all over the world to secure high profile interviews,

on the order of heads of state, presidents and other high level officials, and to produce time sensitive news content on major developing stories from anti-government rebellions, to hotbeds of terrorist activity, to conflict and corruption. Lutzky Decl. ¶ 7. To that end, Mr. Smith currently is abroad and is not expected to return to the United States until September 2016.

Lutzky Decl. ¶ 7. Second, he negotiates high level strategic partnerships with companies around the world to ensure the distribution of Vice's content in new and unique ways. Lutzky Decl. ¶ 7. Finally, in addition to these responsibilities, Mr. Smith oversees Vice's global operations and performs the tasks that any CEO of a large multinational company performs. Lutzky Decl. ¶ 7.

Mr. Smith possesses no unique knowledge regarding Vice's first use of the VICE Mark in connection with providing information about fashion or whether Vice's use of the VICE Mark is such as to cause a likelihood of confusion with Counterclaimant's own marks as it relates to providing information about fashion or otherwise. Lutzky Decl. ¶ 8. There are other executive-level and lower-level employees who are more knowledgeable about these issues; employees that Vice has already agreed to produce for depositions. Lutzky Decl. ¶ 8.

On or about April 26, 2016, Counterclaimant noticed the depositions of Shane Smith and Suroosh Alvi. Declaration of Lawrence R. Robins, dated May 19, 2016 ("Robins Decl."), ¶ 2. Mr. Alvi, like Mr. Smith, is a co-founder of Vice and has been involved in Vice's operations since 1994. Lutzky Decl. ¶ 9. Mr. Alvi assisted counsel in preparing responses to Counterclaimant's interrogatories and document requests in this proceeding. Robins Decl. ¶ 3. Vice will produce Mr. Alvi for deposition. Robins Decl. ¶ 4.

On or about April 28, 2016, counsel for Vice emailed counsel for Counterclaimant to object to producing Mr. Smith for deposition. Robins Decl. ¶ 5. Counsel for Vice noted that courts will protect individuals at the apex of corporate hierarchy from deposition when such individuals lack personal knowledge regarding the litigation, or when the requested information

could be garnered from equally or more knowledgeable subordinates. Robins Decl. ¶ 5. Counsel further noted that Mr. Smith's Notice of Deposition was silent as to the topics as to which Counterclaimant wished to depose him, thus preventing Vice from determining whether or not Mr. Smith possesses unique relevant knowledge, regarding such topics. Robins Decl. ¶ 5. To date, Counterclaimant has failed to identify the topics on which he would like to depose Mr. Smith, much less establish that Mr. Smith possesses unique relevant knowledge on any such topic. Robins Decl. ¶ 5.

Counterclaimant subsequently issued a Rule 30(b)(6) Notice of Deposition to Vice Media that includes a list of topics. Robins Decl. ¶ 7. These topics include, for example: "Trademark searches and investigations relating to the use, or planned use, of the VICE MEDIA LOGO in the United States on Goods and Services related to fashion"; and "Revenues received in connection with goods and services related to fashion offered in the United States in connection with the VICE MEDIA LOGO." Robins Decl. ¶ 7.

If the topics listed in Counterclaimant's Rule 30(b)(6) Notice of Deposition are those on which Counterclaimant wishes to depose Mr. Smith, then there are other lower level employees or officers who are far more knowledgeable about those topics than Mr. Smith. Lutzky Decl. ¶ 11. Indeed, Vice Media intends to produce a witness or witnesses that are capable of testifying knowledgeably about the topics listed in Counterclaimant's Rule 30(b)(6) Notice of Deposition. Lutzky Decl. ¶ 12.

ARGUMENT

The Board has recognized that "[v]irtually every court which has addressed the subject has observed that the deposition of an official at the highest level or 'apex' of corporate management creates a tremendous potential for abuse and harassment." *FMR Corp. v. Alliant Partners*, 1999 TTAB LEXIS 354, at *6, 51 U.S.P.Q.2D (BNA) 1759 (TTAB July 15, 1999); *see*

also Comput. Acceleration Corp., No. 9:06-CV-140, 2007 U.S. Dist. LEXIS 103806, at *3 (E.D. Tex. June 15, 2007) (recognizing possibility of harassment and granting protective order to prevent deposition of Microsoft’s former CEO, Bill Gates); *Porter v. Eli Lilly & Co.*, No. 1:06-CV-1297-JOF, 2007 U.S. Dist. LEXIS 40282, at *8 (N.D. Ga. June 1, 2007) (barring deposition of CEO of Eli Lilly & Co.).

The Board has the authority to prevent the unnecessary depositions of senior corporate officers: “Both the Trademark Rules and the Federal Rules of Civil Procedure grant the Board discretion to manage the discovery process in order to balance the requesting party’s need for information against any injury that may result from discovery abuse.” *Domond v. 37.37, Inc.*, 2015 TTAB LEXIS 26, *5-6, 113 U.S.P.Q.2D (BNA) 1264, 1265 (TTAB Jan. 2, 2015). Rule 26(c) provides that a “court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Fed. R. Civ. P. 26(c). Rule 26(b)(2)(C) provides that a court “must limit the frequency or extent of discovery” if the discovery sought “can be obtained from some other source that is more convenient, less burdensome, or less expensive.” Fed. R. Civ. P. 26(b)(2)(C)(i).

Pursuant to this authority, the Board has held that:

when a party seeks to depose a very high-level official of a large corporation, and that official (or corporation) files a motion for protective order to prohibit the deposition, the movant must demonstrate through an affidavit or other evidence that the official has no direct knowledge of the relevant facts or that there are other persons with equal or greater knowledge of the relevant facts. If the movant meets this initial burden, then the burden shifts to the party seeking the deposition to show that the official has unique or superior personal knowledge of relevant facts. If the party seeking the deposition does not satisfy this showing, then the Board will grant the motion for protective order and require the party seeking the deposition to attempt to obtain discovery through less intrusive methods.

FMR Corp., 1999 TTAB LEXIS 354 at *15-16. Only after exhausting less intrusive discovery methods, such as a Rule 30(b)(6) deposition and depositions of lower level employees, may a party seek to be allowed to take the deposition of the senior official. *See id.*

In fact, this standard governing protective orders limiting depositions of apex witnesses is formally embodied in TBMP § 412.06(a), and it is the official policy of the Board that a party may obtain a “protective order to prohibit the deposition of a very high-level official or executive of a large corporation” by providing “evidence that the high-level official has no direct knowledge of the relevant facts or that there are other persons with equal or greater knowledge of the relevant facts.” TBMP § 412.06(a).

The Board’s position is consistent with that of federal courts across the country, that also held that “[a]n officer at the apex of the corporation can only be deposed if he or she has unique knowledge or the subject matter requested in deposition was pursued unsatisfactory through less intrusive means.” *Carnival Corp. v. Rolls-Royce PLC*, No. 08-23318-CIV, 2010 U.S. Dist. LEXIS 143607, at *7-8 (S.D. Fla. Apr. 22, 2010) (denying motion to compel deposition of CEO of Rolls-Royce); *see, e.g., Salter v. Upjohn Co.*, 593 F.2d 649, 651 (5th Cir. 1979); *Affinity Labs of Tex. v. Apple, Inc.*, No. C 09-4436 CW (JL), 2011 U.S. Dist. LEXIS 53649, at *17-18 (N.D. Cal. May 9, 2011) (granting motion for protective order to prevent deposition of Apple’s CEO, Steve Jobs, in patent dispute); *Celerity, Inc. v. Ultra Clean Holding, Inc.*, No. C 05-4374 MMC (JL), 2007 U.S. Dist. LEXIS 8295, at *8-11 (N.D. Cal. Jan. 24, 2007) (granting protective order preventing deposition of company’s top two executives). “Courts regularly require interrogatories, requests for admission, and depositions of lower level employees before allowing the deposition of an apex witness.” *Affinity Labs of Tex.*, 2011 U.S. Dist. LEXIS 53649 at *17-18.

Here, Counterclaimant's failure to identify the subject matter on which he wishes to depose Mr. Smith, either in the Notice of Deposition or in response to inquiries by Vice's counsel, suggests that Counterclaimant's true intention in seeking the deposition of Mr. Smith is to harass and not to gather discovery. Counterclaimant offered no justification for Mr. Smith's deposition. Nor could he: Mr. Smith does not possess unique knowledge of the factual matters at issue in the case—Vice's use of the VICE Mark in connection with providing information about fashion and the date of first use of the VICE Mark in that capacity—and Counterclaimant has failed to exhaust less intrusive discovery methods.

As set forth in the Lutzky Declaration, Mr. Smith's daily responsibilities involve managing Vice Media's massive media operations around the world and producing Vice's HBO show—he is not intimately involved with Vice's use of the VICE Mark in connection with providing information about fashion. *See* Lutzky Decl. ¶ 7. Many other lower level employees are more intimately involved in such activity and possess greater knowledge thereof than Mr. Smith. Lutzky Decl. ¶ 8. Vice will produce one or more of these witnesses as corporate representatives for deposition pursuant to Counterclaimant's Rule 30(b)(6) Notice of Deposition.

Similarly, with regard to the date of first use of the VICE Mark in connection with providing information about fashion, there are lower level employees who were more intimately involved in that activity and therefore possess equal or greater knowledge thereof than Mr. Smith. Lutzky Decl. ¶ 8. Furthermore, Vice agreed to produce one of the other co-founders of the company, Suroosh Alvi. Lutzky Decl. ¶ 10. Mr. Alvi can testify about the conception, adoption, and first use of the disputed mark in connection with fashion information services. Lutzky Decl. ¶ 10. Mr. Alvi has been involved in Vice's operation since 1994. Lutzky Decl. ¶ 10.

Moreover, it would be unduly burdensome for Vice (and Mr. Smith) to produce Mr. Smith for deposition. Mr. Smith would be forced to return to the United States from abroad to attend the deposition. *See* Lutzky Decl. ¶ 7. More importantly, it would disrupt the operation of Vice's HBO show and would interfere with Vice's development of major partnerships with content distributors. *See* Lutzky Decl. ¶ 7.

Counterclaimant has not yet taken a single deposition. Indeed, Counterclaimant failed even to notice, much less take, a Rule 30(b)(6) deposition of a corporate representative until challenged by Vice's counsel over the Smith deposition notice. The Board should require Counterclaimant to complete the 30(b)(6) and Alvi depositions before seeking to depose Mr. Smith. *See* TBMP § 412.06(a); *FMR Corp.*, 1999 TTAB LEXIS 354 at *15-16.

CONCLUSION

For the foregoing reasons, Vice Media LLC and Vice Media Canada Inc. respectfully request that the Court enter a protective order preventing the deposition of Vice Media's CEO, Shane Smith.

Dated: May 23, 2016

SULLIVAN & WORCESTER LLP

By: /s/Lawrence R. Robins
Lawrence R. Robins
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Boston, MA 02109
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F: (617) 338-2880
lrobins@sandw.com

*Attorneys for Vice Media LLC and
Vice Media Canada Inc.*

CERTIFICATE OF SERVICE

I hereby certify that, on May 23, 2016, I served the foregoing COUNTERCLAIM-
DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR PROTECTIVE ORDER on
Registrant and Counterclaimant in this matter by emailing a true and correct copy thereof to the
following attorney of record for Registrant and Counterclaimant, per the parties' agreement of
October 1, 2015:

Sarah Silbert
ssilbert@berliner-ip.com

Dated: New York, New York
May 23, 2016

/s/Clark A. Freeman
Clark A. Freeman
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*Attorneys for Vice Media LLC and
Vice Media Canada Inc.*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

KAVEH HAROUNIAN,

Counterclaimant,

- against -

VICE MEDIA LLC and
VICE MEDIA CANADA INC.,

Counterclaim-Defendants.

:
: Cancellation No. 92/061,499
:

:
: **DECLARATION OF**
: **LAWRENCE R. ROBINS**
:

Lawrence R. Robins, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am an attorney with the law firm of Sullivan & Worcester LLP, counsel for Counterclaim-Defendant Vice Media LLC (“Vice Media”) and Counterclaim-Defendant Vice Media Canada Inc. (“Vice Canada” and, together with Vice Media, “Vice”). I submit this Declaration in support of Vice’s Motion for a Protective Order preventing Counterclaimant Kaveh Harounian from deposing Vice Media’s Chief Executive Officer, Shane Smith.

2. On or about April 26, 2016, Counterclaimant noticed the depositions of Shane Smith and Suroosh Alvi.

3. Mr. Alvi assisted counsel in preparing responses to Counterclaimant’s interrogatories and document requests in this proceeding.

4. Vice will produce Mr. Alvi for deposition.

5. On or about April 28, 2016, I emailed counsel for Counterclaimant to object to producing Mr. Smith for deposition. I noted that courts will protect individuals at the apex of corporate hierarchy from deposition when such individuals lack personal knowledge regarding the litigation, or when the requested information could be garnered from equally or more

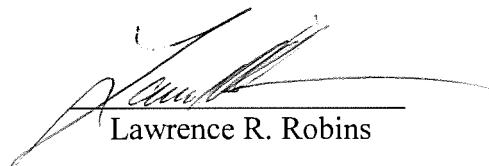
knowledgeable subordinates. I further noted that Mr. Smith's Notice of Deposition was silent as to the topics as to which Counterclaimant wished to depose him, thus preventing Vice from determining whether or not Mr. Smith possesses unique relevant knowledge, regarding such topics.

6. To date, Counterclaimant has failed to identify the topics on which he would like to depose Mr. Smith.

7. On or about April 29, 2016, Counterclaimant served a Rule 30(b)(6) Notice of Deposition to Vice Media that includes a list of topics. These topics include, for example: "Trademark searches and investigations relating to the use, or planned use, of the VICE MEDIA LOGO in the United States on Goods and Services related to fashion"; and "Revenues received in connection with goods and services related to fashion offered in the United States in connection with the VICE MEDIA LOGO."

8. Vice will produce a witness knowledgeable about the topics listed in the Rule 30(b)(6) Notice of Deposition.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 19, 2016.



Lawrence R. Robins

CERTIFICATE OF SERVICE

I hereby certify that, on May 23, 2016, I served the foregoing DECLARATION OF LAWRENCE R. ROBINS on Registrant and Counterclaimant in this matter by emailing a true and correct copy thereof to the following attorney of record for Registrant and Counterclaimant, per the parties' agreement of October 1, 2015:

Sarah Silbert
ssilbert@berliner-ip.com

Dated: New York, New York
May 23, 2016

/s/Clark A. Freeman
Clark A. Freeman
Sullivan & Worcester LLP
One Post Office Square
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*Attorneys for Vice Media LLC and
Vice Media Canada Inc.*

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

KAVEH HAROUNIAN,

Counterclaimant,

- against -

VICE MEDIA LLC and
VICE MEDIA CANADA INC.,

Counterclaim-Defendants.

:
: Cancellation No. 92/061,499
:

:
: **DECLARATION OF**
: **JONATHAN LUTZKY**
:

Jonathan Lutzky, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am the General Counsel of Counterclaim-Defendant Vice Media LLC (“Vice Media”). I submit this Declaration in support of Counterclaim-Defendants Vice Media and Vice Media Canada Inc.’s (“Vice Canada” and, together with Vice Media, “Vice”) Motion for a Protective Order preventing Counterclaimant Kaveh Harounian from deposing Vice Media’s Chief Executive Officer, Shane Smith.

2. Originating in 1994, Vice has grown from a small magazine company into a global digital media and broadcasting empire that operates throughout the United States and in more than 35 countries, with more than 2,100 employees.

3. In 2006, Vice began expanding into digital video, launching VBS.tv, a new video service, as a joint venture with MTV Networks, gaining a large fan base. In 2007, Vice began aggressively expanding its digital and media operation, including venturing into music (Vice Music), sports (Vice Sports), and literature (Vice Books), all while increasing its coverage of news and current events.

4. In August 2013, 21st Century Fox invested \$70 million in Vice, setting up Vice to expand its platform exponentially. In 2013, Vice Media premiered a new 30-minute news program for HBO entitled *VICE*. In 2014, the show won a Creative Arts Emmy Award® for Outstanding Informational Series or Special. Also in 2014, Vice launched its news channel, Vice News.

5. In late 2015, Disney and/or A&E invested \$400 million in Vice. Also in late 2015, Vice and A&E Networks announced Viceland, a cable network featuring Vice curated and produced content. Viceland premiered in early 2016 in the United States and Canada, and is set to launch in the United Kingdom and France with plans to expand to other territories in the future.

6. Mr. Smith is one of three co-founders and remains a co-owner of Vice. He currently serves as the CEO of Vice Media.

7. Mr. Smith's primary responsibilities are threefold. First, Mr. Smith is the on-air host and executive producer of Vice's HBO show, *VICE*. This requires him—frequently and often unexpectedly—to travel all over the world to secure high profile interviews, on the order of heads of state, presidents and other high level officials, and to produce time sensitive news content on major developing stories from anti-government rebellions, to hotbeds of terrorist activity, to conflict and corruption. To that end, Mr. Smith currently is abroad and is not expected to return to the United States until September 2016. Second, he negotiates high level strategic partnerships with companies around the world to ensure the distribution of Vice's content in new and unique ways. Finally, in addition to these responsibilities, Mr. Smith oversees Vice's global operations and performs the tasks that any CEO of a large multinational company performs.

8. Mr. Smith possesses no unique knowledge regarding Vice's first use of the VICE and Design mark (Registration No. 4625064) (the "VICE Mark") in connection with providing information about fashion or whether Vice's use of the VICE Mark is such as to cause a likelihood of confusion with Counterclaimant's own registered mark. Many other executive-level and lower-level employees are more intimately involved in such activity and possess equal or greater knowledge thereof than Mr. Smith.

9. Suroosh Alvi, like Mr. Smith, is a co-founder of Vice and has been involved in Vice's operations since 1994.

10. Mr. Alvi assisted counsel in preparing responses to Counterclaimant's interrogatories and document requests in this proceeding. Vice will produce Mr. Alvi for deposition. Mr. Alvi can testify about the conception, adoption, and first use of the disputed mark in connection with fashion information services. Mr. Alvi has been involved in Vice's operation since 1994.

11. There are lower level employees or officers who are at least as knowledgeable, if not more knowledgeable, than Mr. Smith about the topics listed in Counterclaimant's Rule 30(b)(6) Notice of Deposition.

12. Vice Media intends to produce a witness or witnesses that are capable of testifying knowledgeably about the topics listed in Counterclaimant's Rule 30(b)(6) Notice of Deposition.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 17, 2016.


Jonathan Lutzky

CERTIFICATE OF SERVICE

I hereby certify that, on May 23, 2016, I served the foregoing DECLARATION OF JONATHAN LUTZKY on Registrant and Counterclaimant in this matter by emailing a true and correct copy thereof to the following attorney of record for Registrant and Counterclaimant, per the parties' agreement of October 1, 2015:

Sarah Silbert
ssilbert@berliner-ip.com

Dated: New York, New York
May 23, 2016

/s/Clark A. Freeman
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*Attorneys for Vice Media LLC and
Vice Media Canada Inc.*